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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Eighth session

SUMMARY RECORD OF THE 4th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 17 May 1993, at 11 a.m.

Chairperson: Mr. ALSTON

CONTENTS

Solemn declaration by a new member of the Committee

Consideration of reports

(a) Reports submitted by States parties in accordance with articles 16 and 17 of the Covenant

Kenya and Suriname

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The meeting was called to order at 11 a.m.

SOLEMN DECLARATION BY A NEW MEMBER OF THE COMMITTEE

1. Mr. RATTRAY, newly elected to the Committee, made the following solemn declaration: "I solemnly undertake to discharge my duties as a member of the Committee on Economic, Social and Cultural Rights impartially and conscientiously."

CONSIDERATION OF REPORTS (agenda item 5)

(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT

Consideration of the implementation of the International Covenant on Economic, Social and Cultural Rights by the Governments of Kenya and Suriname

2. The CHAIRPERSON said it was pleasing to note that the International Covenant on Economic, Social and Cultural Rights had now been ratified by some 120 States parties. Unfortunately, however, many of those States parties were seriously in arrears with their reports and some had never even submitted a single one. The problem of the non-submission of reports was one experienced by all the human rights treaty bodies; for the six principal monitoring bodies, more than 1,000 scheduled reports were overdue. The system in force would appear to work to the advantage of those States parties which did not submit reports or which submitted them late. In order to remedy that injustice and prevent the system for the submission of reports from collapsing, the Committee at its previous session had decided to consider the situation in States which had not submitted reports, though not, of course, without again inviting those States to submit a report and take part in the Committee's consideration of situations. The first four countries selected for that procedure had been Kenya, Suriname, Lebanon and Belgium. Belgium had since submitted its report, which would be considered at the Committee's next session. The Lebanese authorities had indicated that they would send a representative when the Committee took up the situation in Lebanon, which it was to do the following week.

3. The Committee would consider the situation in Kenya and Suriname on the basis of all the information available to it. A list of issues to be taken up had been prepared for each country by the pre-sessional working group; the Country Rapporteur would make an introductory statement drawing attention to those matters which in his view should be taken up by the Committee, after which members of the Committee who so wished would make comments. Next, the Country Rapporteur, with the help of the secretariat, would prepare draft concluding observations which would be discussed in closed session. The concluding observations would be adopted by the Committee in the light of the various comments made and communicated promptly to the Governments concerned.

4. Mr. SIMMA (Country Rapporteur for Kenya) said that the information on Kenya which he was about to provide had been taken from a large number of sources and documents, chiefly the Africa South of the Sahara Yearbook (21st ed., 1991), the New African Yearbook (1991-1992), the issues devoted to Kenya of the series of Country Reports and Country Profiles published by the

Economist Intelligence Unit (of the British magazine The Economist) and the Report on Human Rights Practices concerning Kenya, published by the State Department of the United States of America (1992). Clearly, the quantity and quality of the information varied from topic to topic. In addition, it should be remembered that certain sources, such as human rights defence groups, paid more attention to negative than to positive elements in the situation of States; that was why it was regrettable that the Government should not make itself heard. That being said, since his statement could not be other than incomplete and relatively short, he would make available to the members of the Committee any material that interested them or that would enable them to go into a particular matter in more detail.

5. He began by outlining the political situation in Kenya: according to the United States State Department report, a multiparty system had been restored in Kenya in December 1991, but Parliament and the courts remained largely under the control of KANU (Kenya African National Union) and the services of President Daniel Arap Moi. In December 1992, elections had been held to choose the President of the Republic, deputies and local government officials. According to various foreign observers and monitoring groups, there had been irregularities in the voting procedure and in the counting of the votes. Nevertheless, there had been a large turn-out at those elections, the first in Kenya's recent history to take place under a multiparty system. Many opposition groups and parties had been able to express their views and present candidates.

6. In regard to the economic situation, he noted that, although the State enterprise system was predominant, there was an active private sector in trade and manufactures. The inhabitants of Kenya had the right to own property and to engage in private economic activity. Agriculture provided the food needed for national consumption and a considerable number of export products such as coffee and tea. Tourism was the biggest foreign-currency earner; however, it had been in decline since 1992 because of the unstable political climate and rising crime. The overall rate of growth had declined in 1992, and the steady increase in population meant rising unemployment.

7. As far as fundamental freedoms were concerned, it would appear that the Government was according more respect than in the past to freedom of expression, freedom of assembly and the right to a fair trial but that, at the same time, it was reluctant to make large-scale reforms and was continuing to hamper the activities of political opponents. It was alleged that government authorities inspired or promoted acts of violence against certain opponents and ethnic groups; such violence had caused hundreds of deaths and brought about the displacement of thousands of persons. Although freedom of expression and freedom of the press were officially protected by the Constitution, in fact the Government was allegedly seeking through various means, including the courts, to stifle opposition.

8. In regard to the general legal framework within which human rights were protected, (he explained that he was following in his statement the list of issues prepared by the pre-sessional working group (E/C.12/1993/WP.3)), it was clear that implementation of the Covenant could not be evaluated without taking into account the political and economic situation of Kenya, which was passing through a period of crisis and turbulence. The transition from the

single-party to a multiparty system seemed to be going ahead, even though it was encountering serious obstacles, with the elites trying to maintain the status quo from which they profited through corruption and abuse of power. The most serious friction came from inter-ethnic violence, which had caused thousands of deaths. In the economic field, international bodies such as the World Bank and IMF were demanding a complete liberalization and privatization of the Kenyan economic and financial system, which they found still too pervaded by State intervention. From the point of view of respect for economic, social and cultural rights, those purely economic reforms needed to be accompanied by specific programmes for the protection of vulnerable groups. In that connection, the Government was proceeding very slowly, claiming a shortage of resources. It would appear that the parlous state of the economy was due in part to the mismanagement of public funds. The economic situation was continuing to deteriorate. In the second half of 1992, the Central Bank had issued billions of new shillings, increasing the money supply by 60 per cent. That policy had had a disastrous effect on inflation, and had resulted in a widening of the gap between rich and poor. Although education and the social welfare system were still much better than in many other African countries, he believed that Kenya's capacity to absorb the economic and political crisis was exhausted.

9. As far as the obligation to submit reports to the human rights treaty bodies was concerned, it must be said that Kenya had a poor record. The only report it had submitted in the last few years was the one it had sent to the Committee on the Elimination of Discrimination against Women; apparently, women were very active in Kenya.

10. He then turned to the specific rights set forth in the International Covenant on Economic, Social and Cultural Rights. With regard to the implementation of articles 6 and 7 of the Covenant, he noted that, according to World Bank statistics, the labour force participation rate was declining. Wages were fixed either through individual contracts, or by law, or by collective bargaining agreements. There was a minimum wage which applied basically to non-unionized workers and which served as a point of departure for collective bargaining. The minimum wage rules applied to two categories of persons: those working in agriculture and those employed in the general economy. Two advisory boards were responsible for assessing the minimum wage. Their role was purely consultative, and the final decision was always made by the Minister of Labour. Each board set up councils responsible for wage matters. His first criticism in that connection was that minimum wages were too low. Unskilled agricultural workers over 18 years of age earned about 27.15 Kenyan shillings a day (about US50 cents), which was just enough to pay for one or two kilos of grain. Legal machinery was in place, but the Ministry of Labour did not have enough staff to enforce the existing regulations. According to the leading German newspaper Frankfurter Allgemeine Zeitung, in its issue of 4 May 1993, a general strike might well break out if wages were not doubled. The Government was apparently ready to increase wages by 15 per cent, but the inflation rate might be about 40 per cent. According to an April issue of The Economist, the rate could even be as high as 70 to 100 per cent. Inflation was undermining the standard of living of workers, who were forced to take a second or third job in order to survive. In regard to working conditions proper, the regulations on wages and conditions limited the working week to 52 hours.

11. Non-agricultural workers were entitled to one day off a week, one month's annual vacation and sick leave. In regard to overtime, the total number of hours worked should be not more than 144 in any two-week period.

12. The Ministry of Labour was responsible for enforcing those laws. In addition, the Factory Act of 1951 set out detailed rules on health and safety; it had been amended in 1990 to cover the agricultural and public service sectors. Sixty-five Ministry of Labour inspectors were empowered to visit workplaces to see that those regulations were respected. Their reports were generally satisfactory.

13. Turning to article 8 of the Covenant, which dealt with the right to form trade unions and the right to strike, he said that the first right was set forth in article 80 of the Kenyan Constitution, which imposed certain restrictions on its exercise. Between 1980 and 1991, the Government had banned the national union of Kenyan civil servants and had also forbidden university staff to form unions. He did not know yet whether the latter prohibition had been rescinded. The central trade union organization had been taken over in 1965 by KANU, the single party which still governed the country. According to certain sources, the right to strike was illusory, although it was provided for by law. There were six possibilities in the case of labour disputes: firstly, the Minister of Labour could reject the report on the dispute; secondly, he could accept it; thirdly, he could refer the matter back to the parties concerned without proposing a solution; fourthly, the Minister could try to reconcile the parties; fifthly, he could request an investigation; lastly, he could recommend that the dispute should be taken to the industrial court, which consisted of judges appointed by the President. The court's decision was binding on the parties. According to the law, any strike was illegal until a written report on the dispute had been communicated to the Minister of Labour and a period of 21 days had elapsed. The strike became legal if the Minister himself or the industrial court rescinded the Minister's original refusal. In addition, articles 27 to 30 of the Act on the settlement of labour disputes gave the Minister unrestricted power to declare any strike illegal. In that connection, he said that he did not know of a strike which had not been declared illegal.

14. In regard to article 9 of the Covenant, dealing with social security, he said that there was a Kenyan social security scheme known as the National Hospital Insurance Fund which was open to anyone with a taxable wage of at least 1,000 shillings. However, married women whose husbands earned such a wage were not entitled to participate in the Fund. The system was wholly out of keeping with conditions in the country, and many employees in the public and private sectors belonged to a National Social Security Fund. Employees contributed according to the amount of their pay until they reached retirement age (set at 55) or became disabled. The Fund was very prosperous and many documents charged that it was being mismanaged for purposes of financial speculation or even political ends.

15. In regard to article 10 of the Covenant, he said that Kenya had entered some interesting reservations to paragraph 2. While recognizing the principles set forth in that paragraph, the Kenyan Government considered that the circumstances prevailing in Kenya did not require Kenyan legislation to make those principles binding. In accordance with the decision taken at the

recent meeting of Chairpersons of human rights treaty bodies, he asked whether it would be possible to envisage asking the Kenyan Government to withdraw its reservations. He noted that the most important problem connected with article 10 was that of street children. According to some reports, more than 20,000 children lived in dire poverty, sniffing glue to survive. According to a Nairobi newspaper, 7 out of 10 of those children had no hope of reaching adulthood, 3 girls out of 10 had AIDS, and 9 out of 10 were carriers of a sexually transmissible disease. The funds allocated by the Government to combat those phenomena were very limited. In 1992-1993, the Children's Department had allocated only £2.5 million to those children (£1 = 20 shillings). According to UNICEF data on infant mortality (children under 5), Kenya came forty-ninth in a list of 129 countries. According to the Yearbook of Human Rights in the Developing Countries, child prostitution was widespread throughout the country.

16. In regard to article 11 of the Covenant, he said that the standard of living of the Kenyan population as a whole was steadily declining. Inflation far outstripped wage increases. The Central Bank issued banknotes solely in order to ensure Mr. Moi's re-election. Unemployment was also rising and currently stood at 45 per cent. Unfortunately, the general atmosphere in the country was well illustrated by a headline in the newspaper Sunday Nation of April 1993, which spoke of Kenyans, once so proud, being paralysed by despair. According to the UNDP Human Development Report 1992, per capita GNP in 1989 had been US$ 360 and US$ 70 for the poorest 40 per cent of the population. In the period 1980-1989, 44 per cent of the population had been living below the poverty line. As far as the food situation was concerned, assistance from international organizations and donor countries was more necessary than ever to keep the population fed.

17. As for housing, the information provided by Habitat International Coalition painted a rather gloomy picture of the situation. Eviction was widespread in Kenya, particularly in Nairobi. Most evictions were carried out purely for the purpose of keeping the towns clean. In November-December 1990, 440,000 persons had been forcibly evicted from their lodgings without notice although they had been living there for 20 years. Administrative buildings were also demolished. That practice was becoming more and more widespread, and he quoted a number of specific examples. The housing deficit in urban areas was currently estimated at 287,000 units, when annual requirements were 70,000 units. Fifty-five per cent of housing in Nairobi had no sanitary facilities and 61 per cent had no running water. In 1991, only 1 per cent of GNP had been spent on housing construction. There was no legislation in that field and it was therefore difficult to practise a coherent policy.

18. Turning to article 12 of the Covenant, he said that, according to the Kenya Country Profile in the Economist Intelligence Unit report, while available statistics on health in Kenya were neither coherent nor reliable, birth and death rates did indicate some progress over the previous 20 or 30 years. According to data collected by the World Bank, life expectancy at birth had risen from 46 years in 1965 to 57 years in 1990 for men and from 50 to 61 for women. The infant mortality rate had declined from 112 to 67 per 1,000 live births over the same period. Those rates were much lower than the average for sub-Saharan Africa. Emphasis had recently been placed on primary health care, and programmes had been organized in 25 districts.

Priority was given to urban areas in the allocation of resources: in Nairobi, there had been 407 hospital beds per 100,000 persons in 1991, as against 148 beds per 100,000 persons outside the capital. The number of doctors had increased, rising to more than 3,400 for 23 million inhabitants in 1991, or 15 per 100,000 persons. The latest World Bank report indicated that Government health expenditure had declined steadily in the last few years. Spending on health had been 7.3 per cent of total expenditure in 1980 but only 5.8 per cent in 1988. Currently, 2 per cent of GNP was spent on health as against 1.5 per cent in 1960.

19. On article 13 of the Covenant, he said that according to the Economist Intelligence Unit report, the Kenyan educational system had been considerably expanded since independence. Thus, in 1991-1992, public expenditure on education had been 20 per cent of the State budget. According to the same report, enrolment in primary and secondary schools had increased considerably, although enrolment in higher education still represented only a small proportion of the members of the age group concerned. In addition, dropping out was still an important problem in the rural areas and the poor districts of the towns. In January 1985, a new educational system, known as "8-4-4" had been introduced to replace the old system, known as "7-6-3", the figures representing the number of years of primary education, secondary education and the initial phase of higher education, respectively. In addition, in January 1992, the authorities had decided to reduce the number of subjects taught in the secondary education certificate syllabus; they had been cut from 10 to 8, and currently only English, Swahili and mathematics were compulsory.

20. There were certain more specific problems in regard to education in Kenya. First, according to a reliable source which could not be named, the figures announced were exaggerated, given the regular occurrence, which was concealed, of pupils dropping out from and resuming school, owing to problems linked to educational policy and the cost of schooling. Secondly, the children of nomads and those from poor areas or districts received very little schooling, notwithstanding official figures to the contrary. That problem was due to the fact that, as part of set policy in education, the authorities required the various communities to be responsible for erecting school buildings before providing them with teachers and materials. Moreover, there was no provision within that policy for adapting school fees to the level of living of the various communities, in particular the poorest of them. Thirdly, it would appear that the quality of education was better in the government secondary schools than in the "community schools". It was important, in that context, that students should have equal opportunities to attend the government schools. It would appear, however, that more places were reserved for boys than for girls in the government schools. Fourthly, the State's investments in education were channelled chiefly to secondary and university education, which created an imbalance harmful to primary education. Lastly, it would appear that the introduction of the "8-4-4" system had provoked a considerable crisis in education. The first students to benefit from the new system were now entering university and would appear to be having serious difficulties in science courses.

21. With regard to article 15 of the Covenant, in particular the freedom indispensable for scientific research, he said that he had recently received a

document from Africa Watch according to which, in the 1980s, the university community had been increasingly subjected to intimidation. Among other things, the authorities had established an "exit permit" for any member of the university community wishing to travel abroad. Similarly, any research worker was forced to obtain a "research permit" before beginning his work. The permit was granted by a Research Commission on which the Special Branch (internal security service) was represented. The subject of the research could not be "sensitive". Furthermore, even if the permit was granted, it could be withdrawn without notice or explanation. Lastly, there was no possibility of appeal against such a decision. The University of Nairobi was regarded by the Kenyan authorities as a hotbed of radicalism. Consequently, the funds available to that university had been cut sharply and diverted to a university in the west of the country. The Government had also co-opted a series of Nairobi University professors with a view to controlling thought, research and education. The last measure had been publicly admitted by President Moi himself. Lastly, the establishment of a network of informers among the students and among the teaching body made it difficult, if not impossible, to exercise a university profession honestly and with integrity. As in other countries, such acts of intimidation had resulted in the flight of the best law professors, for example, and of specialists in the humanities.

22. In the field of culture, it should be noted that the authorities engaged in censorship and regularly prohibited the dissemination of books or periodicals.

23. He would conclude his statement with a few comments regarding women and minorities. With respect to women, he drew the attention of the members of the Committee to the interesting figures regarding disparities between men and women given in the Human Development Report 1992.

24. Concerning minorities, according to a document put out by a number of NGOs with headquarters in the Netherlands the marginalization of national minorities was a particularly acute problem of discrimination in Kenya. The phenomenon related to two types of population. In the first place, the pastoral nomads had been forced to change their way of life rather than use being made of their experience. Thus, communal land ownership, traditional among those populations, had been dismantled, their customary way of life had collapsed and poverty had become widespread among them without any programme being worked out to take their rights into account. Communities of Somali origin were also discriminated against. Since the end of 1989, the authorities had started to take a census of those persons and as part of it made them carry a special identity card which in fact meant that they were treated as second-class citizens. That information on minorities dated from 1990 and he had no information regarding recent developments in that connection. However, he had every reason to believe that the situation had not improved, particularly since the number of Somalis in Kenya was steadily increasing.

25. Mrs. VYSOKAJOVA said that Mr. Simma had indicated that 65 per cent of the rural population lived below the poverty line. She took it, furthermore, that medical care was not free. She would therefore like to know who had access to health care and whether there was a health insurance system.

26. Mr. GRISSA said that he had no wish to serve as devil's advocate, but would recommend the members of the Committee to bear in mind that, in many African countries, the decline of per capita income prevented the authorities from solving a number of problems. Spiralling foreign debt, the fall in commodity prices and the loss of developed-country markets were common to many countries in Africa. Those various factors made the problems almost insurmountable. Moreover, in the particular case of Kenya, he understood that the country had asked for United Nations assistance in solving the problem of the ever increasing number of refugees from Somalia, Ethiopia, and no doubt from Uganda and Tanzania as well.

27. Mr. RATTRAY said that Mr. Simma's statement offered a perfect example of the considerable difficulties which the Committee encountered when a country did not submit the report requested from it under the Covenant. With the best will in the world, the Country Rapporteur concerned could only present an unsatisfactory picture of the situation. Mr. Simma had gone to the trouble of consulting all kinds of sources in order to depict the situation in Kenya, but those sources were mainly non-governmental. Yet, in most cases, there were national surveys and reports which would be of considerable interest despite their possible imperfections.

28. The Committee, having recognized that countries which did not submit reports should not be in a more favourable position than those which agreed to be in the firing line might make an effort to obtain national reports by proposing that such countries should agree to receive a representative of the Committee or of the Commission on Human Rights. That representative would be responsible for observing the situation on the spot and for helping Governments which found the operation difficult to prepare a report. He realized that it would be argued that there was no money to do that, but he thought that, if the Committee was to take its responsibilities seriously, it must be provided with resources, even limited resources, which would allow it to evaluate situations on the spot.

29. In conclusion, he said he firmly believed that it was incumbent upon the Committee to try to enter into a dialogue with those countries which had not submitted reports, in order to find out why they had not done so, to offer them assistance, and to investigate the situation on the spot on the basis of the criteria which it had itself defined.

30. The CHAIRPERSON said that he saw definite advantage in using a variety of sources, as Mr. Simma had done, on the grounds that diversity led to greater reliability. He agreed with Mr. Grissa that the consideration of the situation in countries which were for the most part undergoing economic recession, particularly in Africa, had been a serious problem for the Committee for some years. The Committee should define clearly its role in such circumstances. He recalled that it was the business of institutions such as the World Bank, UNICEF or UNDP to provide those countries with assistance, since the Committee had neither the information nor the necessary skills to help them out of their difficulties. On the other hand, the justification for the Committee's existence was its mandate, accepted by all States parties to the Covenant, to devote itself to protecting the economic, social and cultural

rights not of countries but of individuals. Of course, it must take into account the macroeconomic context in which those individuals lived, but it must always bear in mind its special mission.

31. Reverting to Mr. Rattray's intervention, he said that the Committee should, before even studying the case of countries which posed problems, take the necessary time to seek out a method of work and a procedure that would be convincing and effective from the point of view of the Covenant. It should do so with the greatest of care in the case of Kenya, the first country whose situation was being studied in the absence of any Government report.

32. He fully agreed with Mr. Rattray that the Economic and Social Council should be asked to allocate the Committee budgetary resources that would enable it to offer the services of its experts to Governments which so requested. In the current state of affairs, new arrangements had to be made on each occasion, which was very time-consuming and produced disappointing results.

33. In that connection, he wondered whether it was preferable for the experts appointed in that way to be members of the Committee or not. Although, on the one hand, they were better acquainted than anyone else with the type of information that needed to be collected from the point of view of the Covenant, on the other, it might be easier for members of the Committee to question an expert on his report, and possibly challenge the information he provided, if he was not a member of the Committee.

34. In conclusion, he recalled that the Committee had offered the Kenyan Government the assistance of advisory services in drafting its report and had indicated its readiness to receive any documents which the Government would like to send, but it had received no reply. Since it would be unfortunate if Governments which were unwilling to prepare a report offloaded the responsibility on to the expert sent on mission, the Committee might, in its concluding observations on the situation in Kenya, request that an expert should be appointed under the advisory services programme to go to Kenya and possibly to assist that country's Government in drawing up a detailed report.

35. Mr. ALVAREZ VITA said that he was somewhat confused, regarding the action to be taken once the appointed expert had completed his work - a confusion which he believed was shared by some of the other members of the Committee, particularly the newcomers, and the Chairperson himself. The Chairperson had already drawn attention to the danger that Governments would relieve themselves of the task of preparing a report, but in addition, an expert would never be in a position to reply to a question such as that posed by Mrs. Vysokajova, and would never enjoy the same weight, as far as the international community was concerned, as the representative of a country. He thought that the members of the Committee should discuss among themselves, on an informal basis, what modus operandi they envisaged for relations with countries failing to submit reports.

36. Mr. SIMMA recalled that the advantages and disadvantages of the proposed arrangements had been discussed by the Committee at its previous session. However, he agreed that the matter should be discussed in greater detail.

37. The CHAIRPERSON, explaining the modus operandi, said that after a statement was made on the situation of the country under consideration, the Committee could make comments or ask questions. The person giving the statement would not necessarily be in a position to reply, but the comments would throw light on certain concerns, and the Committee could then, based on those comments and questions, prepare draft concluding observations which would be less definite than those which it made after an active dialogue with the representative of a country. In its concluding observations, it could express its concern at certain items of information, ask whether that information was accurate, and suggest to the country that the Committee should provide it with the services of an expert to assist it in preparing a report. For the moment, the Committee could await the draft concluding observations to be prepared by Mr. Simma, in order to discuss them freely in closed session, and draw up a text which it would send to Kenya. It was the first time that the Committee was taking that course of action and there was every reason to suppose that the procedure would be refined with experience. He announced that the consideration of the situation in Kenya was thus concluded.

The meeting rose at 1 p.m.